

G. W. DAILY

IBLA 78-28 Decided March 14, 1978

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting application A 9959 to open land in a reclamation withdrawal to mineral location.

Set aside and remanded.

1. Act of April 23, 1932—Mining Claims: Lands Subject to—Mining Claims:
Withdrawn Lands—Reclamation Lands: Generally—Withdrawals and Reservations:
Reclamation Withdrawals—Withdrawals and Reservations: Revocation and
Restoration

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

APPEARANCES: W. T. Elsing, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

G. W. Daily has appealed from the September 15, 1977, decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting his application, A 9959, filed pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970), to restore lands to mineral entry. Appellant seeks restoration of land withdrawn under two first-form reclamation withdrawals for the Salt River Project.

In rejecting appellant's application, the State Office cited reasons given by the Bureau of Reclamation for its opposition to opening the lands. These reasons included possible adverse effects on water quality, the lack of availability of water for mineral development, reduction of surface runoff, as well as the possibility that the land might have to be reacquired if it is opened to location under the mining laws. Regulation 43 CFR 3816.3 provides that the Bureau of Land Management will reject an application to open the lands to mineral location subject to right of appeal where the Bureau of Reclamation makes an adverse report on the application.

Appellant contends that the adverse environmental effects can be avoided or mitigated, that the land contains valuable uranium deposits along a fault, and that the Government's interest would be adequately protected through a contract or by the reservation of rights-of-way and easements as provided under 43 U.S.C. § 154 (1970). He has requested a hearing in order to prove these contentions.

[1] Ordinarily an application to restore land within a reclamation withdrawal to mineral entry will be rejected by the Bureau of Land Management where the Bureau of Reclamation makes an adverse report and recommends against restoration. 43 CFR 3816.3; Surprise Venture Associates, 7 IBLA 44 (1972). The BLM's action was in accord with the regulation. However, a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted on appeal by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest. Surprise Venture Associates, *supra*.

As appellant has pointed out, there is authority for this Department to take certain protective measures to mitigate possible environmental or other harm. The Act of April 23, 1932, 43 U.S.C. § 154 (1970), leaves it to the discretion of the Secretary of the Interior, "when in his opinion the rights of the United States will not be prejudiced thereby" to open lands withdrawn for reclamation purposes which "are known or believed to be valuable for minerals and would, if not so withdrawn, be subject to location and patent under the general mining laws." The Secretary may reserve:

[W]ays, rights, and easements over or to such lands * * *, and/or the said Secretary may require the execution of a contract by the intending locator or entryman as a condition precedent to the vesting of any rights in him, when in the opinion of the Secretary same may be necessary for the protection of the irrigation interests.

Any entry or patent shall refer to such terms or reservations and be subject to them.

The land in this case is within the Tonto National Forest. In Surprise Venture Associates, supra, the land was also within that National Forest and within the Salt River Project. Upon further inquiry from this Board in that case, the Commissioner of the Bureau of Reclamation adhered to a recommendation that the petition be denied, but suggested alternatively that the Bureau of Land Management, with the cooperation of the Forest Service, investigate the value of the alleged mineral deposits to determine whether the deposits are of sufficient value to make mining operations profitable. Accordingly, BLM's decision rejecting the application to restore the land to mineral entry was set aside and the case remanded for a mineral examination and further consideration and recommendations by the Bureau of Reclamation.

Appellant alleges that there is a valuable deposit of uranium. His application showed certain facts tending to corroborate this assertion. He appears willing to suggest proposals for a contract or reservations whereby his activities will not be harmful to the environment or prejudice the interests of the United States. He has done so in a general way. We believe this case should be remanded, as in Surprise Ventures, for an appropriate mineral examination and evaluation. Also, appellant may make more specific proposals and suggestions to the Bureau of Reclamation for conditions and terms to be imposed if the land were to be opened for mineral entry. The report of the mineral examination should be forwarded to the Bureau of Reclamation for its consideration and further recommendations on appellant's application. Upon such further report from that Bureau, BLM may take further appropriate action.

In view of this disposition of appellant's appeal, his request for a hearing pursuant to 43 CFR 4.415 is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this decision.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

